GovDeals, Inc. v. Metropolitan Government of Nashville and Davidson County, Tennessee Doc. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GOVDEALS, INC., **A Delaware Corporation,** **Plaintiff,** **v.** **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE** **Defendant.**	)	**Civil Action No. __________**

COMPLAINT

Plaintiff, GovDeals, Inc. ("GovDeals"), a Delaware corporation, hereby alleges as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1338, 35 U.S.C. §§271 and 281, in that this is an action for patent infringement and unfair competition.

2. This Court has personal jurisdiction over Defendant by virtue of Defendant's residence in the Middle District of Tennessee and engaging in tortious acts within the Middle District of Tennessee.

3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c) and 1400(b).

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The Parties

4. Plaintiff GovDeals is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 5913 Carmichael Place, Montgomery, Alabama 36117.

5. GovDeals is a company that markets and sells, among other things, services related to the conducting of government surplus and seized goods auctions over the Internet.

6. On information and belief, Defendant, the Metropolitan Government of Nashville and Davidson County ("Metro Nashville"), is a valid governmental entity formed and existing under the laws of the State of Tennessee, having its principal place of business at 225 Polk Avenue, Nashville, Tennessee 37203, and may be served through its agent, Karl Dean, at Metro Historic Courthouse, Suite 108, Nashville, Tennessee 37201.

7. On information and belief, Metro Nashville is engaged in the business of marketing, offering for sale, and selling services related to the conducting of government surplus and seized goods auctions over the Internet in this and other districts.

Background Facts

8. On September 20, 2005, United States Patent No. 6,947,906 (the "'906 patent") entitled "Method for Conducting a Computerized Government Auction" was duly and legally issued to Michael Underwood and Forrest Simonton. A copy of the '906 patent is attached hereto and made part hereof as Exhibit A.

9. GovDeals is the exclusive licensee of the '906 patent and has the sole right to bring an action to recover for its infringement.

10. The '906 patent is directed at least to a tiered method for auctioning government assets over a computerized network, such as the Internet.

11. GovDeals has marketed and sold, and is currently marketing and selling, services which incorporate the invention of the '906 patent.

12. GovDeals, in its marketing and advertising of services incorporating the invention of the '906 patent, identifies these services as being within the purview of the '906 patent. Prior to issuance of the '906 patent, GovDeals notified prospective clients and the industry that an internet based auction that included the tiered disposition of surplus assets was the subject of a pending patent application.

13. On information and belief, Metro Nashville is using, selling or offering for sale services related to the conducting of government surplus and seized goods auctions over the Internet that includes the tiered method claimed in the '906 patent.

14. On information and belief, Metro Nashville is using, selling or offering for sale services related to the conducting of auctions for government assets, such as surplus and seized goods, over the Internet by retrieving asset information such as an asset restriction for the asset to be auctioned, retrieving buyer profile codes from potential buyers, comparing the asset restriction with the buyer profile codes and determining a group of authorized bidders; notifying the authorized bidders of the asset for auction; conducting a tiered auction; and automatically performing an additional tiered auction if an outcome of the first tier auction is that the asset remains available.

15. In 2001, GovDeals provided Metro Nashville with a proof of concept demonstration of a method for disposing of surplus assets. The proof of concept was later documented in a response to a Request for Proposal.

16. As part of the communications between Metro Nashville and GovDeals, Metro Nashville was informed that GovDeals had filed a patent application seeking patent protection for the method demonstrated in the proof of concept.

17. In September 22, 2005, GovDeals sent a certified letter to Metro Nashville advising it that GovDeals had been awarded the '906 patent and that it believed that Metro Nashville may be in violation of the '906 patent.

18. GovDeals has attempted on several occasions to engage in discussions regarding the method utilized by Metro Nashville to auction surplus property.

19. Metro Nashville has been unwilling to share any information on its method for auctioning surplus property.

Count I - Patent Infringement

20. GovDeals restates the allegations in paragraphs 1-19.

21. Metro Nashville has infringed, contributed to and induced others to infringe the '906 patent and unless enjoined, will continue to infringe the '906 patent by practicing the method(s) claimed in the '906 patent and by contributing to or inducing others to practice the claimed method(s).

22. As a consequence of the acts of infringement by Metro Nashville complained of herein, GovDeals has been damaged in an amount not yet determined, and GovDeals will continue to be damaged by such acts in the future and will suffer irreparable harm, for which GovDeals has no adequate remedy at law, unless Metro Nashville is enjoined by this Court from committing further acts of infringement.

Count II - Unfair Competition

23. GovDeals restates the allegations in paragraphs 1-22.

24. Metro Nashville has unfairly competed with GovDeals by copying its patented features of the '906 Patent and by otherwise causing customer confusion; by using and disclosing skills and know-how taught to Metro Nashville in confidence, and by wrongfully appropriating and making use of such skills and know-how, all of which practices have resulted in serious

injury to plaintiff's business position, reputation, and good will, and will result in irreparable injury to GovDeals unless enjoined by this Court.

Prayer for Relief

WHEREFORE, plaintiff GovDeals, Inc. respectfully requests this Court for entry of a judgment providing:

1. That Metro Nashville infringed and is infringing one or more claims of the '906 patent literally or under the doctrine of equivalents.

2. That Metro Nashville has contributed and is contributing to the infringement of the '906 patent others.

3. That Metro Nashville has induced and is inducing others to infringe one or more claims of the '906 patent.

4. That Metro Nashville, its officers, directors, agents, servants, representatives, employees, successors, assigns and all persons acting in active concert or participation therewith be preliminarily and permanently enjoined from further direct or contributory infringement of, or inducement of others to infringe, the '906 patent.

5. That Metro Nashville account for and pay to GovDeals all damages caused to GovDeals by Metro Nashville's direct and contributory infringement of, and inducement of others to infringe, the '906 patent, and that such damages be enhanced in view of the deliberate and willful nature of the infringement.

6. Metro Nashville be required to account to GovDeals for the actual damages suffered by GovDeals as a result of the wrongful taking and use of GovDeals skills and know-how, and the acts of unfair competition by Metro Nashville, the exact extent of which cannot now be determined by GovDeals.

7. That GovDeals be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Metro Nashville's direct and contributory infringement of, and

inducement of others to infringe, the '906 patent, as well as damages suffered by GovDeals as a result of the wrongful taking and use of GovDeals skills and know-how, and the acts of unfair competition by Metro Nashville, the exact extent of which cannot now be determined by GovDeals.

8. That Metro Nashville be required to pay GovDeals's reasonable attorneys fees and all costs incurred in this action.

9. That this Court grant such other relief as it may deem just and proper.

Respectfully submitted,

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